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4 UNITED STATES COURT OF APPEALS
5 FOR THE SECOND CIRCUIT
6

7 SUMMARY ORDER
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9 THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER
10 AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY
11 OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY
12 OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR
13 IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.
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15 At a stated term of the United States Court of Appeals for the Second Circuit, held at the
16 Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York,
17 on the 8th day of September, two thousand and six.
18

19 PRESENT:

20 HON. WILFRED FEINBERG,
21 HON. CHESTER J. STRAUB,
22 HON. BARRINGTON D. PARKER,
23 *Circuit Judges.*
24

25
26 Bao Huan Lin,
27 _____ *Petitioner,*

28 -v.-

No. 06-0294-ag
NAC

30
31 United States Department of Homeland Security,
32 Board of Immigration Appeals,
33 Alberto Gonzales, Attorney General United States,
34 *Respondents.*
35
36 _____

37 FOR PETITIONER: Albert S. Lefkowitz, Forest Hills, New York.

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39 FOR RESPONDENTS: John C. Richter, United States Attorney for the Western District of
40 Oklahoma, Kay Sewell, Assistant United States Attorney,
41 Oklahoma City, Oklahoma.

42 UPON DUE CONSIDERATION of this petition for review of the Board of Immigration
43 Appeals (“BIA”) order, it is hereby ORDERED, ADJUDGED, AND DECREED that the petition

1 for review is GRANTED.

2 Petitioner Bao Huan Lin, a native and citizen of China, seeks review of a December 28,
3 2005 order of the BIA affirming the July 28, 2004 decision of Immigration Judge (“IJ”) Sandy
4 Hom denying his application for asylum, withholding of removal and relief under the Convention
5 Against Torture (“CAT”). *In re Bao Huan Lin*, No. A 79 415 329 (B.I.A. Dec. 28. 2005), *aff’g*
6 No. A 79 415 329 (Immig. Ct. N.Y. City July 28, 2004).

7 When the BIA issues an opinion that fully adopts the IJ’s decision, this Court reviews the
8 IJ’s decision. *See, e.g., Chun Gao v. Gonzales*, 424 F.3d 122, 124 (2d Cir. 2005); *Secaida-*
9 *Rosales v. INS*, 331 F.3d 297, 305 (2d Cir. 2003). This Court reviews the agency’s factual
10 findings, including adverse credibility determinations, under the substantial evidence standard,
11 treating them as “conclusive unless any reasonable adjudicator would be compelled to conclude
12 to the contrary.” 8 U.S.C. § 1252(b)(4)(B); *see, e.g., Zhou Yun Zhang v. INS*, 386 F.3d 66, 73 &
13 n.7 (2d Cir. 2004). However, we will vacate and remand for new findings if the agency’s
14 reasoning or its fact-finding process was sufficiently flawed. *Cao He Lin v. U.S. Dep’t of*
15 *Justice*, 428 F.3d 395, 406 (2d Cir. 2005); *Tian-Yong Chen v. INS*, 359 F.3d 121, 129 (2d Cir.
16 2004); *see also Xiao Ji Chen v. U.S. Dep’t of Justice*, 434 F.3d 144, 158 (2d Cir. 2006) (agreeing
17 with this principle, but stating that remand may be avoided in spite of deficiencies in an adverse
18 credibility determination when it can be confidently predicted that the IJ would adhere to the
19 decision on remand).

20 In this case, the IJ found Lin’s testimony incredible because of the following
21 implausibilities and inconsistencies: (1) Lin testified that he hid from the family planning
22 officials at a brick factory, which he co-owned and which was registered with the Chinese

1 government, yet he claimed that officials never sought him out or discovered him at the factory;
2 (2) Lin testified that he secretly returned to his village, risking arrest and sterilization, so that he
3 could follow village custom, and have his children born at home; and (3) Lin testified that his
4 wife avoided IUD insertion after the birth of their first child because she was ill, yet in his
5 asylum application, Lin stated that his wife escaped IUD insertion by fleeing their home. With
6 regard to Lin's claim that the family planning authorities sought him for sterilization, these are
7 "specific, cogent reasons" that "bear a legitimate nexus" to the IJ's adverse credibility finding,
8 *Zhou Yun Zhang*, 386 F.3d at 74, regardless of any errors in the IJ's additional reasoning.

9 The IJ, however, did not appear to consider the separate issue of whether Lin could make
10 out a derivative claim based on his allegation that his wife was forcibly, albeit unsuccessfully
11 sterilized following the birth of the couple's second child. *See In re C-Y-Z-*, 21 I. & N. Dec. 915,
12 919 (B.I.A. 1997) (en banc) (holding that forced sterilization of an individual is also an act of
13 past persecution against the individual's spouse). The IJ discussed the alleged sterilization
14 primarily as it bore on Lin's testimony that the authorities would not have attempted a second
15 sterilization on his wife, even after the birth and registration of the couple's third child
16 potentially alerted the authorities that the alleged sterilization had been unsuccessful, and so
17 sought him instead for sterilization. Apart from a passing reference to Lin's testimony regarding
18 the alleged sterilization as "implausible," the IJ's decision contains no findings as to the fact of
19 the sterilization itself or whether it was forced as Lin claims. It is possible that the IJ's adverse
20 credibility finding extended to Lin's testimony about the alleged sterilization. But in the absence
21 of any meaningful evaluation of Lin's testimony or supporting documentation – which included
22 his wife's affidavit, radiology and medical reports, photographs purporting to show his wife's

1 surgical scars, and a hospital-issued sterilization certificate – as to the alleged sterilization, we
2 think it more likely that Lin’s derivative asylum claim premised on his wife’s alleged forced
3 sterilization was overlooked as a potential basis for relief. Remand is appropriate for evaluation
4 of all aspects of this claim.

5 For the foregoing reasons, the petition for review is GRANTED. The decision of the BIA
6 is VACATED and the case is REMANDED for further proceedings consistent with this decision.
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9 FOR THE COURT:
10 Roseann B. MacKechnie, Clerk
11 By: _____
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